

Hearing Date: Not Set
Objection Deadline: February 20, 2019

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEBRASKA**

In re:)	Chapter 11
)	
SPECIALTY RETAIL SHOPS HOLDING)	Case No. 19-80064-TLS
CORP., <i>et al.</i>)	
)	
Debtors.)	(Jointly Administered)
)	
)	

**LIMITED OBJECTION OF IREIT WEST BEND MAIN, L.L.C. TO
DEBTORS' MOTION FOR APPROVAL TO EXTEND THE TIME
WITHIN WHICH THE DEBTORS MUST ASSUME OR REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

IREIT West Bend Main, L.L.C. (the "Landlord"), through its attorneys, submits this limited objection (the "Limited Objection") to the *Debtors' Motion for Approval to Extend the Time Within Which the Debtors Must Assume or Reject Unexpired Leases of Nonresidential Real*

Property (Dkt. 240) (the “Motion”). In support of this Limited Objection, the Landlord respectfully submits as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Nebraska (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On January 16, 2019, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the Court.

3. The Landlord and Shopko Stores Operating Co., a Debtor, are parties to an unexpired lease of nonresidential real property (the “Lease”) of the following premises (the “Premises”):

<u>Landlord</u>	<u>Shopping Center</u>	<u>Location</u>
IREIT West Bend Main, L.L.C.	Pick-n-Save Center	West Bend, WI

4. The Premises is located within a “shopping center” as that term is used in § 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

5. On January 30, 2019, the Debtors filed the Motion.

6. On January 30, 2019, the Court established an objection deadline to the Motion of February 20, 2019 (Dkt. 241), but a hearing date would only be set if an objection was filed.

7. Through the Motion, the Debtors seek entry of an order extending the deadline to assume or reject unexpired leases and subleases of nonresidential real property from May 16, 2019 to August 14, 2019, pursuant to Section 365(d)(4)(B)(i) of the Bankruptcy Code.

OBJECTION

8. Section 365(d)(4) of the Bankruptcy Code provides:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the *earlier of*—

(i) the date that is 120 days after the date of the order for relief; *or*

(ii) the date of the *entry of an order confirming a plan*.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4) (emphasis added).

9. It is well established that a debtor must make the decision whether to assume or reject executory contracts and unexpired leases no later than the date of entry of an order confirming the plan. *See* 11 U.S.C. § 365(d)(4)(A); *see also In re Dana Corp.*, 350 B.R. 144, 147 (Bankr. S.D.N.Y. 2006). No statutory authority exists to extend the deadline to assume or reject the Lease beyond the date entry of an order confirming the plan. *See In re Dynamic Tooling Systems, Inc.*, 349 B.R. 847, 854 (Bankr. D. Kan. 2006); *In re Cole*, 189 B.R. 40, 46 (Bankr. S.D.N.Y. 1995).

10. In order for the order to accurately track the language of Section 365(d)(4), an extension of the deadline to assume or reject unexpired leases of nonresidential real property may only be granted to the *earlier of* (i) the date of entry of an order confirming the plan, or (ii) August 14, 2019.

JOINDER AND RESERVATION OF RIGHTS

11. The Landlord joins in the objections of other landlords of the Debtors to the extent they are not inconsistent with this Objection.

12. The Landlord reserves its rights to supplement this Limited Objection and to make such other and further objections as they may deem necessary or appropriate, including, but not limited to, any proposed order granting the Motion.

CONCLUSION

WHEREFORE, the Landlord respectfully requests that the Court deny the Motion or condition any grant of the Motion as set forth in this Limited Objection, and grant the Landlord any additional and further relief the Court deems just and proper.

Dated: February 20, 2019

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CERTIFICATE OF SERVICE

I certify that on February 20, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record registered with the CM/ECF system.

/s/ Patrick R. Turner
Patrick R. Turner